

Part III – Administrative, Procedural, and Miscellaneous

Guidance Under Section 1061, Partnership Interests Held in Connection with Performance of Services

Notice 2018-18

SECTION 1. OVERVIEW

This notice announces that the Department of the Treasury (Treasury Department) and the Internal Revenue Service (IRS) intend to issue regulations providing guidance on the application of section 1061 of the Internal Revenue Code as enacted by “An Act to provide for reconciliation pursuant to titles II and V of the concurrent resolution on the budget for fiscal year 2018,” Public Law 115-97 on December 22, 2017. This notice further announces that the Treasury Department and the IRS intend that those regulations will provide that the term “corporation” for purposes of section 1061(c)(4)(A) does not include an S corporation.

SECTION 2. APPLICABLE LAW

Section 1061(a) provides in general that if one or more applicable partnership interests are held by a taxpayer at any time during the taxable year, the excess (if any) of (1) the taxpayer’s net long-term capital gain with respect to such interests for such taxable year, over (2) the taxpayer’s net long-term capital gain with respect to such

interests for such taxable year computed by applying paragraphs (3) and (4) of section 1222 by substituting “3 years” for “1 year,” shall be treated as short-term capital gain, notwithstanding section 83 or any election in effect under section 83(b).

Section 1061(c)(1) generally defines the term “applicable partnership interest” as meaning any interest in a partnership which, directly or indirectly, is transferred to (or is held by) the taxpayer in connection with the performance of substantial services by the taxpayer, or any other related person, in any applicable trade or business.

Section 1061(c)(4)(A) provides that the term “applicable partnership interest” shall not include any interest in a partnership directly or indirectly held by a corporation.

Section 1361(a)(1) provides in general that the term “S corporation” means, with respect to any taxable year, a small business corporation for which an election under § 1362(a) is in effect for such year.

Section 1361(a)(2) provides in general that the term “C corporation” means, with respect to any taxable year, a corporation which is not an S corporation for such year.

Section 1361(b)(1) defines a “small business corporation” as a domestic corporation which is not an ineligible corporation and which does not -- (A) have more than 100 shareholders, (B) have as a shareholder a person (other than an estate, a trust described in section 1361(c)(2), or an organization described in section 1361(c)(6)) who is not an individual, (C) have a nonresident alien as a shareholder, and (D) have more than 1 class of stock.

SECTION 3. THE EXCEPTION IN SECTION 1061(c)(4)(A) DOES NOT APPLY TO PARTNERSHIP INTERESTS HELD BY S CORPORATIONS.

The regulations will provide that the term “corporation” in section 1061(c)(4)(A)

does not include an S corporation.

SECTION 4. EFFECTIVE DATE

Section 1061 is effective for taxable years beginning after December 31, 2017. The Treasury Department and the IRS intend to provide that regulations implementing section 3 of this notice will be effective for taxable years beginning after December 31, 2017.

SECTION 5. CONTACT INFORMATION

The principal authors of this notice are Faith P. Colson and Wendy L. Kribell of the Office of the Associate Chief Counsel (Passthroughs & Special Industries). For further information regarding this notice contact Faith P. Colson or Wendy L. Kribell on 202-317-6850 (not a toll-free call).